

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of September, two thousand and six.

PRESENT:

HON. JON O. NEWMAN,
HON. ROBERT A. KATZMANN,
HON. RICHARD C. WESLEY,
Circuit Judges.

Fatime Brahimi, Ervin Brahimi,
Petitioners,

v.

Nos. 06-0888-ag (L), -0889-ag (con)
NAC

Board of Immigration Appeals,
Respondent.

FOR PETITIONERS: Gary J. Yerman, New York, New York.

FOR RESPONDENT: Because the Court did not receive a brief from the respondent within fifteen days of the July 7, 2006 due date specified in the scheduling order issued on May 3, 2006, this case has been decided without the benefit of respondent's brief. *See* Local Rule § 0.29(d).

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Petitioners Fatime and Ervin Brahimi, natives and citizens of Albania, each seek review of a February 8, 2006 order of the BIA denying their motion to reissue its August 4, 2005 decision. *In re Fatime Brahimi*, No. A79 301 097, and *In re Ervin Brahimi*, No. A78 420 763 (B.I.A. Feb. 8, 2006). In the earlier decision, the BIA had affirmed the February 12, 2004 decision of Immigration Judge (“IJ”) Paul DeFonzo denying both Brahimis’ applications for asylum, withholding of removal, and relief under the Convention Against Torture. *In re Fatime Brahimi*, No. A79 301 097 (B.I.A. Aug. 4, 2005), and *In re Ervin Brahimi*, No. A78 420 763, *aff’g* Nos. A79 391 097, A78 420 763 (Immig. Ct. N.Y. City Feb. 12, 2004). We assume the parties’ familiarity with the underlying facts and procedural history of the case.

We review the BIA’s denial of a motion to reissue a decision, like that of a motion to reopen, for an abuse of discretion. *See Ke Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001). An abuse of discretion may be found where the BIA’s decision “provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements; that is to say, where the Board has acted in an arbitrary or capricious manner.” *Id.* (internal citations omitted).

While the BIA has the general authority under 8 U.S.C. § 1229a(c)(7) to reopen or reissue a decision at any time, nothing compels it to do so; such action extends to the alien a “measure of grace.” *See Firmansjah v. Ashcroft*, 347 F.3d 625, 626-27 (7th Cir. 2003). Here, the record indicates that the BIA sent its August 2005 decision to the Brahimis’ former attorney at his address of record, and there is no indication that his office ever moved. When the only evidence that he never received the decision was his uncorroborated statement to that effect, and when the Brahimis had already had the opportunity to present their claims before an IJ, receive a decision, and appeal to the BIA, we do not find that the BIA abused its broad discretion in declining to reissue its decision denying that appeal in order to provide them the opportunity to seek additional review.

____ For the foregoing reasons, the petition for review is DENIED. Having completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: _____